

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH H. BEATON,

Plaintiff,

v.

JPMORGAN CHASE BANK N.A., et
al.,

Defendants.

CASE NO. C11-872RAJ

ORDER

I. INTRODUCTION

The court has received Plaintiff's motions for temporary restraining order and preliminary injunction (Dkt. ## 3, 4). For the reasons stated below, the court DENIES both motions.

II. BACKGROUND & ANALYSIS

Plaintiff owns a home in Des Moines, Washington. She acknowledges that in August 2006, a deed of trust was recorded on her home with Washington Mutual Bank, FA ("WaMu") as the beneficiary. *See* Complaint (Dkt. # 1), Ex. B. It appears from the

1 documents submitted by Plaintiff along with her Complaint that the current beneficiary is
2 Defendant JPMorgan Chase Bank NA (“Chase”), as successor in interest to WaMu. *See*
3 Complaint, Ex. D. Those documents also state that Plaintiff is in default of the deed of
4 trust for failing to pay \$15,320.28 owed. *See id.* As a result, Plaintiff has been notified
5 that a trustee’s sale of her home will occur, as conducted by Defendant Northwest
6 Trustee Services, Inc. (“NTS”).¹

7 Plaintiff wishes to, *inter alia*, restrain the trustee’s sale. She has sued Chase and
8 NTS, proceeding *pro se*. Her complaint requests declaratory relief “to determine []
9 whether Defendants have any legal or equitable rights in the Note or Deed of Trust, as to
10 whether the Trustee’s Deed is invalid and void, and whether Defendants have any legal
11 standing to title or possession.” Complaint ¶ 24. She also seeks a determination of
12 whether Chase properly executed or recorded all endorsements and assignments of the
13 beneficial interest in the promissory note and deed of trust. *See* Complaint ¶ 25. She also
14 requests restraint of the trustee’s sale to avoid irreparable harm. *See* Complaint ¶¶ 29-30.
15 Plaintiff subsequently filed motions for a temporary restraining order and preliminary
16 injunction. *See* Pltf.’s Mots. (Dkt. ## 3, 4).

17 As noted in this court’s previous order (Dkt. # 2), whether Plaintiff has properly
18 provided notice of her lawsuit and motions to Defendants is a crucial issue before the
19 court, because a court cannot enter a preliminary injunction unless the adverse party
20 receives notice. Fed. R. Civ. P. 65(a). And though a court may enter a temporary
21 restraining order without notice to the adverse party, the moving party must state
22 “specific facts in an affidavit or a verified complaint” that “clearly show that immediate
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25 ¹ Though Plaintiff contends the trustee’s sale is set for June 3, 2011, the only notice of
26 trustee’s sale in the record indicates that the sale was scheduled for March 18, 2011. *See*
27 Complaint, Ex. D. The court’s review of the King County Recorder’s Office web site reveals no
subsequent notices rescheduling the sale to June 3 or any other date.

1 and irreparable injury, loss, or damage will result to the movant before the adverse party
2 can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The moving party must also
3 “certif[y] in writing any efforts made to give notice and the reasons why notice should
4 not be required.” Fed. R. Civ. P. 65(b)(1)(B). Plaintiff’s motion for temporary
5 restraining order states that NWT has received notice of the lawsuit and the motion via its
6 registered agent. *See* Pltf.’s Mot. at ¶ 4. That assertion is not supported by Plaintiff’s
7 “certificate of service.” *See* Certificate of Service (Dkt. # 6) (stating that a person named
8 Melissa Wagner “personally served” documents on NWT, but no registered agent or
9 other receiving individual is identified). Plaintiff’s evidence of service does not assure
10 this court that she has complied with Federal Rule of Civil Procedure 4 or RCW 4.28.080
11 (setting out the requirements for service upon corporations in Washington). There is no
12 evidence in the record that the relevant documents have been provided to a person
13 authorized to accept service for either Defendant, and the certificate of service’s
14 reference to the Defendants’ addresses suggests that Plaintiff may have merely delivered
15 copies of the documents to those addresses.

16 Furthermore, Plaintiff’s motion does not provide a credible basis on which the
17 court could conclude that she is likely to succeed on the merits of her claim. She argues
18 that the trustee’s sale is improper because her alleged default is “in dispute and
19 unproven,” and because the Defendants have not produced documentation of a valid loan
20 obligation. As to the first basis, the only documents in the record establish that Plaintiff
21 is in default (see Complaint, Exs. D & F). As to the second basis, Plaintiff has attached
22 to her complaint a letter from Chase dated April 5, 2011, which states that it is enclosing,
23 *inter alia*, a copy of the note and security interest. *See* Complaint, Ex. F. Plaintiff did
24 not attach those enclosures to her complaint, though it appears she has copies of the
25 documents that could resolve this issue.

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3 **III. CONCLUSION**

4 For these reasons, the court DENIES Plaintiff's motions (Dkt. ## 3, 4). Plaintiff
5 may renew her motion(s) upon correction of the deficiencies identified in this order.

6 Dated this 27th day of May, 2011.
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10 The Honorable Richard A. Jones
11 United States District Judge
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